

DANIEL AND JOSEPH JACKSON, PLAINTIFFS IN ERROR *vs.* JOHN
TWENTYMAN.

The 11th section of the act of 1789, must be construed in connexion with and in conformity with the constitution of the United States. By this latter, the judicial power does not extend to private suits in which an alien is a party, unless a citizen be the adverse party; and it is indispensable to aver the citizenship of the defendants, to show, on the record, the jurisdiction of the court.

THIS cause was brought before the Court by a writ of error to the circuit court of the southern circuit of New York.

The description of the parties on the record was "John Twentyman, a subject of the king of Great Britain *vs.* Daniel and Joseph Jackson." No citizenship of the defendants being argued.

The question was whether the circuit court under the 11th section of the judiciary act of 1789, ch. 20, which gives jurisdiction, among other cases, "where an alien is a party," had jurisdiction of the cause without an assumpsit on the record of the citizenship of the defendants.

Mr Taylor, for the plaintiffs in error, argued that the judgment of the circuit court should be reversed. He cited *Bingham vs. Cabot*, 3 *Dall.* 382. *Hodgson vs. Bowerbant*, 5 *Cranch*, 303. *Sullivan vs. The Fulton Steam Boat Company*, 6 *Wheaton*, 450.

The Court were of opinion that the 11th section of the act must be construed in connexion with and in conformity to the constitution of the United States. That by the latter, the judicial power was not extended to private suits, in which an alien is a party, unless a citizen be the adverse party. It was indispensable therefore to aver the citizenship of the defendants, in order to show on the record the jurisdiction of the court.

The omission so to do was fatal, and according to the known course of the decisions of the Court, the judgment of the circuit court must be reversed for want of jurisdiction.